



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
4700 MacCorkle Ave., SE  
Charleston, West Virginia 25304  
(304) 558-0169 • FAX (304) 558-0831

August 3, 2011

Re: JIC Advisory Opinion 2011-14

Dear Judge

In a letter to the Commission you asked for an advisory opinion. In the correspondence you stated that two respondent parents in an abuse and neglect matter presently pending before your court also appeared in the Family Court in County while you were the Family Court Judge and, in light of prior direction from the Supreme Court regarding cases in which you formerly presided as a Family Court Judge, you seek an opinion as to whether you can continue to preside over the abuse and neglect matter in the Circuit Court.

The issue of disqualification and temporary assignment of a judge is addressed in West Virginia Trial Court Rule 17. That is, of course, the Rule that you should first follow if there is a motion for disqualification or if you want to voluntarily recuse yourself from a case.

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The grounds for disqualification of a judge are also set forth in W. Va. Code, § 51-2-8 and include a judge's pecuniary interest in a case, her relation by consanguinity or affinity with a party, and their prior participation in the case.

The Code of Judicial Conduct, Canon 3E provides additional rules for the "voluntary recusal" of a judge. The Commission previously addressed this Canon for you in an Advisory Opinion in which you were advised that you should not preside over any case in which you made findings or rendered decisions while previously serving as a family court judge. Thus, in the absence of a motion, you are to disqualify yourself in a proceeding in which your impartiality might reasonably be questioned. There are specific instances listed in the rule and the commentary state that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in section 3E(1) apply."

The Commission cannot address recusal issues covered by Trial Court Rule 17 or West Virginia Code §51-2-8. We are also limited in our ability to issue advisory opinions on many of the recusal issues not specifically addressed by Canon 3E(1). The risk of judicial bias is not always clear. Recusal issues frequently do not present mandatory recusals. It is always important to look at the recusal situation through the eyes of the litigant when your impartiality is questioned.

In response to your request for an advisory opinion, the conclusion of the Commission is that the issue you present, based upon the Supreme Court of Appeals prior directions to you about presiding in cases involving litigants who appeared before you in family court, is a matter for you to address with the Supreme Court of Appeals.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Judge  
Judicial Investigation Commission Chairman

REW/haw